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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MICHAEL J. SHORTLEY, III
Senior Attorney and Director
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DOCKET FILE COPY ORIGINAL *Frontier Corporation*

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May 14, 1999

BY OVERNIGHT MAIL

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Suite TW-A325
Washington, D.C. 20554

**Re: CC Docket No. 96-128
NSD File No. L-99-34**

Dear Ms. Salas:

Enclosed for filing please find an original plus four (4) copies of the Comments of Frontier Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael J. Shortley, III".

Michael J. Shortley, III

cc: Mr. Al McCloud, Network
Services Division

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FEDERAL COMMUNICATIONS COMMISSION
Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation)	NSD File No. L-99-34
Provisions of the Telecommunications)	
Act of 1996		

COMMENTS OF
FRONTIER CORPORATION

In response to the Commission's Public Notice,¹ Frontier Corporation ("Frontier"), on behalf of its common carrier subsidiaries, submits these comments on the petition for clarification filed by the RBOC/GTE/SNET Payphone Coalition.² In its petition, the Coalition requests the Commission to "clarify" that "the owner of the first switch is responsible for per-call compensation -- unless...a facilities-based reseller affirmatively identifies itself to the PSP as responsible for the payment of compensation and actually undertakes to pay per-call compensation on those calls."³

The Commission should dismiss the petition because it is flatly contradicted by applicable Commission orders and cannot be reconciled with the provisions of section 276 of the Act.

¹ Public Notice, DA 99-730, *Common Carrier Bureau Seeks Comment on the RBOC/GTE/SNET Payphone Coalition Petition for Clarification Regarding Carrier Responsibility for Payphone Compensation Payment*, CC Dkt. 96-128, NSD File No. L-99-34 (April 15, 1999) ("Notice").

² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Petition for Clarification (Feb. 26, 1999) ("Petition").

³ Petition at 3.

Argument

I. GOVERNING COMMISSION PRECEDENT REQUIRES DISMISSAL OF THE PETITION.

The Coalition asserts that the Commission's rules require that the carrier "to whom a completed call is routed" be deemed the carrier that first switches the call. Therefore, according to the Coalition, that party is responsible for payphone compensation unless and until some other carrier affirmatively steps forward and claims this responsibility.⁴ The relevant orders simply cannot be read to reach this result. In its *Reconsideration Order*, the Commission placed the responsibility to pay payphone compensation on switch-based resellers. The Commission concluded:

We clarify that a carrier is required to pay compensation and provide per-call tracking for the calls originated by payphones if the carrier maintains its own switching capability, regardless if the switching equipment is owned or leased by the carrier....If a carrier does not maintain its own switching capability, then, as set forth in the *Report and Order*, and consistent with our clarification here, the underlying carrier remains obligated to pay compensation to the PSP in lieu of its customer that does not maintain a switching capability.⁵

The Commission's allocation of the responsibility for payment is clear. An underlying carrier is only responsible for the payment of compensation on behalf of its switchless resale customers. If the reseller maintains its own switching

⁴ Petition at 2 n.2, 3.

⁵ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Order on Reconsideration, 11 FCC Rcd. 21233, ¶ 92 (1996) ("Reconsideration Order").

capability, it is responsible for the payment of compensation on calls that it terminates that originate from payphones,

This conclusion is compelled by the Commission's primary economic beneficiary test that the Commission utilized to assign the responsibility to pay compensation to interexchange carriers.⁶ The carrier that actually terminates the call is the entity that receives the retail revenue with respect to that call and hence is the economic beneficiary. Under the Commission's reasoning, the compensation burden must fall on the terminating carrier.⁷

Later Bureau pronouncements support this interpretation of the Commission's *Reconsideration Order*. The Bureau concluded:

As clarified in the Order on Reconsideration, switch-based resellers are responsible for paying per-call compensation when facilities-based IXC's providing 800 service have determined that they are not required to pay compensation on 800 number calls because their switch-based resale customers have identified themselves as responsible for paying the compensation. The facilities-based carrier must cooperate with PSPs seeking to bill for resold services. Thus, a facilities-based carrier must indicate, *on request by the billing PSP*, whether it is paying per-call compensation for a particular 800 number. If it is not, then it must identify the switch-based reseller responsible for paying payphone compensation for that particular 800 number.⁸

⁶ *Id.*

⁷ It is no answer to argue that underlying carrier also receives payment from its reseller customer. Exchange carriers receive access charges on these calls as well, yet, Frontier suspects that the Coalition would not suggest that exchange carriers assume the compensation obligation.

⁸ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Memorandum Opinion and Order, 13 FCC Rcd. 10893, ¶ 38 (Com. Car. Bur. 1998) (emphasis added).

Under the Commission's rules, the only circumstance in which an underlying carrier could disclaim responsibility for compensation for a particular completed call that originated from a payphone is when it does not complete the call -- that is, which its switch-based reseller customer completes the call. In this circumstance, the responsibility of the underlying carrier is clear and confined. It must, *upon request of the PSP*, identify the reseller that is responsible for the payment of compensation. However, the underlying carrier is *not* responsible for the payment of compensation on calls completed by its switch-based resale customers.

The Coalition's complaint that its members are experiencing "a serious shortfall in payments of per-call compensation"⁹ is irrelevant. To the extent there truly are shortfalls *and* these shortfalls are attributable to resellers not paying payphone compensation, the fault lies squarely with the PSPs. They may request the underlying carriers to identify the resale customers responsible for paying compensation and then resort to the usual collection remedies against those carriers to enforce their rights. If the Coalition's members have failed to take such action, the "shortfall" problem is of their own making. That provides absolutely no justification for the Commission to "reinterpret" its rules to hold the underlying carrier responsible for compensation for payphone calls that it did not complete.

⁹ Petition at 1.

**II. THE COALITION'S PETITION CANNOT BE
RECONCILED WITH THE LANGUAGE OF
SECTION 276 OF THE ACT.**

Section 276 of the Act requires that compensation be paid on each and every *completed* interstate and intrastate payphone call. Obviously, in the circumstance at issue here, the carrier that provides the first point of switching is not the carrier that completes the call. Rather, it is the last interexchange carrier that actually completes the call. Responsibility for per-call compensation, under the Act, cannot fall upon the originating interexchange carrier.

Nonetheless, the Coalition complains that it is difficult for its members to collect payphone compensation from switch-based resellers.¹⁰ Therefore, the Coalition wants the Commission to force the large interexchange carriers to assume responsibility for compensation for calls terminated by their resale customers. As the Coalition explains its position:

The use of the CIC to identify the party responsible for payment of per-call compensation is the most *efficient* way to ensure that the party responsible for compensation is aware of its obligations, and to *facilitate* the reconciliation of payment obligations between PSPs and IXC's.¹¹

¹⁰ Petition at 1, 2 (complaining of shortfalls).

¹¹ *Id.* at 2 (emphasis added).

The problem with the Coalition's position is apparent. As the Coalition apparently concedes, the carrier identification code of the originating carrier does not necessarily identify the carrier that actually terminates the call and receives the retail revenue therefrom. On this basis, the Coalition's proposal does not comport with the language of section 276.

The Coalition attempts to enlist the Commission's aid in dragooning the large interexchange carriers to act as the collection agents for the PSPs or, worse, to make them directly responsible for the payment of payphone compensation for calls that are completed by others. As described above, the Coalition essentially admits that the only basis for its proposal is the administrative convenience of its members.¹²

This argument, however, has been raised before and squarely rejected by the D.C. Circuit. Under its initial per-line compensation regime, the Commission attempted to limit the compensation burden to interexchange carriers with annual revenues in excess of \$100 million. The Court vacated that limitation:

[W]e also find that the FCC acted arbitrarily and capriciously in requiring payments only from large IXCs -- those with over \$100 million in toll revenue -- for the first phase of the interim plan. The FCC based this decision on concerns of administrative convenience....It is far from clear that the administrative burdens are as great as the FCC deems them to be, as such carrier would merely be required to write a check based on its percentage of annual toll revenues. Yet, even assuming, arguendo, that the FCC's limitation marginally increases

¹² The Coalition also conveniently ignores the remedies already available to its members to force carriers to live up to their compensation obligations. See *supra* at 4.

administrative convenience, this limitation comes at a huge cost. For example, if small IXC's were included, they would be required to pay as much as \$4 million per month....*Administrative convenience cannot possibly justify an interim plan that exempts all but large IXC's from paying for the costs of services rendered.*¹³

Administrative convenience of the PSPs -- which the Coalition advances as the primary, if not only, justification for its scheme -- certainly cannot justify a *permanent* plan of the type the Coalition envisions. The Coalition is asking that the Commission impose a compensation obligation on only the largest interexchange carriers and thus exempt smaller carriers from the obligation to pay compensation on calls that they complete and hence, of which they are the economic beneficiaries (in the Commission's own words). The D.C. Circuit's holding precludes the Commission from granting the Coalition's petition.

¹³

Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997), 1997 U.S. App. LEXIS 16147 at 28-29. (emphasis added).

Conclusion

For the foregoing reasons, the Commission should dismiss the Coalition's petition.

Respectfully submitted,



Michael J. Shortley, III

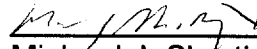
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May 14, 1999

Certificate of Service

I hereby certify that, on this 14th day of May, 1999, copies of the foregoing Comments of Frontier Corporation were served by first-class mail, postage prepaid, upon the parties on the attached service list.

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Michael J. Shortley, III

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